

VIRGINIA DEALERS IN AGRICULTURAL PRODUCTS LAW
TITLE 3.1
AGRICULTURE, HORTICULTURE AND FOOD
CHAPTER 26
SALE OF FARM PRODUCE

Article 3.

Dealers in Agricultural Products

§ [3.1-722.1](#). Definitions.

As used in this article unless the context requires a different meaning:

"Agricultural products" means vegetables, and the term "vegetables" for the purposes of this article shall be construed to include, but not by way of limitation, potatoes, tomatoes, melons, berries, and cucumbers.

"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.

"Bond" means a bond executed by a surety company licensed to do business in the Commonwealth.

"Buying brokerage transaction" means a transaction in which the dealer acts as agent for the grower in the purchase of agricultural products at the "day's price" for the agricultural product purchased in the transaction.

"Cash buyer" means any person who obtains from the producer, or his representative, title, possession or control of any agricultural product or contracts for the title, possession or control of any agricultural product, and who buys any agricultural product by paying to the producer at the time of obtaining possession or control, or at the time of contracting for the title, possession or control of any agricultural product, the full agreed price of such agricultural product in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Consignment" means any transfer of agricultural products by the seller to the custody of another person who acts as the agent for the seller for the purpose of selling such agricultural products.

"Day's price" means the market price of any agricultural product on a given day as determined by the United States Department of Agriculture and published by the Virginia Department of Agriculture and Consumer Services, Division of Marketing.

"Dealer" means any person who buys, sells, solicits for sale, processes for sale or resale, resells, exchanges, negotiates, purchases or contracts for processing or transfers any agricultural product of a producer. The term "dealer" shall exclude (i) any person operating solely on a commission basis in Virginia as a licensed commission merchant under the provisions of Article 2 (§ [3.1-692](#) et seq.) of Chapter 26 of Title 3.1; (ii) farmers or groups of farmers selling agricultural products grown by them; (iii) any person who operates strictly as a cash buyer; (iv) any processor who processes agricultural products within Virginia; and (v) any person who buys agricultural products for wholesale or retail in Virginia.

"Department" means the Department of Agriculture and Consumer Services.

"Grower's agent transaction" means a transaction or series of transactions in which the dealer agrees to sell the entire crop produced by one grower during one season, at a price to be agreed upon between the dealer and the grower.

"Joint account transactions" means a transaction between a dealer and grower in which the dealer pays the grower based on the price for which the agricultural product sells in relation to the price agreed upon between the dealer and grower.

"Processor" means any person operating any plant within Virginia which either freezes, dehydrates, cans, or otherwise changes the physical form or characteristics of agricultural products.

"Producer" means any person who produces agricultural products in Virginia.

§ [3.1-722.1:1](#). Appointment of agents.

The Commissioner may appoint agents to assist in carrying out the provisions of this article and the regulations promulgated pursuant thereto.

§ [3.1-722.2](#). License required.

It shall be unlawful for any dealer in agricultural products to operate and conduct a business without first having obtained a license as herein provided. The Commissioner may publish a list of licensed dealers under this article.

§ [3.1-722.3](#). Application for license and license fee.

Every dealer in agricultural products proposing to transact business within the Commonwealth shall on or before May 1 of each year file a written application for a license with the Commissioner for the licensing year of May 1 to April 30. Each dealer shall pay a license fee of fifty dollars per licensing year. Each license shall expire on April 30 of the licensing year for which the Commissioner or his agent issued the license. Every such license shall be valid through May 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application and a new bond or a continuation certificate continuing their current bond with the Commissioner on or before April

30 of the licensing year for which the Commissioner or his agent issued the license; however, any license issued on or after January 1, 1994, and on or before May 1, 1994, shall expire on April 30, 1995. Any dealer in agricultural products proposing to transact business within the Commonwealth who fails to file such written application for a license and pay the licensing fee on or before May 1 shall be subject to a fifty dollar late fee in addition to the license fee. Any person who engages in business as a dealer before obtaining a license shall be subject to a \$250 penalty, in addition to the license fee and the late fee. The application for a license shall be on a form furnished or approved by the Commissioner and shall contain the following information along with such other information as the Commissioner shall require on the form:

1. The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this Commonwealth;
2. The kinds of agricultural products the applicant proposes to handle; and
3. The type of produce business proposed to be conducted.

§ [3.1-722.4](#). Bond required.

Each application shall be accompanied by a good and sufficient bond in the minimum sum of \$1,000 or in such greater amount as is equal to the maximum amount of gross business the applicant does in any month in the Commonwealth during the preceding licensing year, but in no event shall the amount of bond required exceed \$40,000.

§ [3.1-722.5](#). Execution, terms and form of bond; action on bond.

The bond referred to in § [3.1-722.4](#) shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in the Commonwealth as surety. The applicant shall file on or before May 1 of each licensing year a copy of this bond with the Commissioner and the Commissioner shall be designated as the trustee of this bond. If the bond is not filed by the due date, and if the applicant notifies the Commissioner that the bond application is in process and furnishes the Commissioner a copy of the dated bond application, the Commissioner may grant a grace period of fifteen working days for the applicant to file the bond without penalty. Any applicant who fails to file a bond by the fifteenth day of the grace period, shall be subject to all applicable late fees and penalties as stated in §§ [3.1-722.3](#) and [3.1-722.11](#) before a license will be issued. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all agricultural products purchased, handled or sold by the dealer. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action therefor upon the bond against the principal, or the surety, or both in any court of competent jurisdiction.

[3.1-722.5:1](#). Additional duties and powers of Commissioner.

The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner

may institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a produce dealer to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has actual notice thereof and believes the claim to be valid. If the Commissioner believes the claim to be invalid, in whole or in part, he shall so notify the claimant. The claimant shall then have his remedy pursuant to § [3.1-722.5](#). Notwithstanding any other provision of law, the Commissioner shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by him.

§ [3.1-722.6](#).

Repealed by Acts 1994, c. 340.

§ [3.1-722.6:1](#). License renewals.

Each licensee shall renew his licenses on or before May 1 of each year for the licensing year May 1 to April 30. The licensee shall make application to the Commissioner on a form furnished or approved by the Commissioner. Each licensee shall pay a license fee of fifty dollars per licensing year and shall submit on or before May 1 of each licensing year a new bond or a continuation certificate continuing the licensee's current bond. Each license renewal shall expire on April 30 of the licensing year for which the Commissioner or his agent issued the license. Every such license shall be valid through May 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application and a new bond or a continuation certificate continuing his current bond with the Commissioner on or before April 30 of the licensing year for which the Commissioner or his agent issued the license; however, any license issued on or after January 1, 1994, and on or before May 1, 1994, shall expire on April 30, 1995. Any person who fails to renew his license or bond by the due date is subject to the applicable late fees and penalties as stated in §§ [3.1-722.3](#) and [3.1-722.11](#).

§ [3.1-722.7](#). Disposition of funds.

All sums received by the Commissioner for license fees, the renewals of the same, late fees, and penalties shall be paid into a dedicated special fund in the state treasury to be known as the Agricultural Dealers Fund. Any moneys in the fund shall not revert to the general fund. The fund shall be used for the enforcement and administration of this article. Disbursements from the Fund shall be made by the State Comptroller at the written request of the Commissioner.

§ [3.1-722.8](#). Records to be kept by dealers.

It shall be the duty of every dealer having received any agricultural product from a producer to make and keep a correct record and retain the same for three years, showing in detail the following with reference to the handling and/or sale of such agricultural products, along with

such other information as the Commissioner may require as outlined in the record inspection form:

1. The name and address of the producer;
2. The date received;
3. The condition, grade (if officially graded) and quantity on receipt;
4. The date of resale or transfer of the products to another; and
5. The price at which purchased and sold.

§ [3.1-722.9](#). Commissioner's authority to inspect.

A. Upon the complaint of any person, the Commissioner or his agent shall have the authority to inspect the books and records of any licensed dealer in agricultural products at any time during operating hours and shall have free access to the place at which the business is operated.

B. Upon the complaint of any person or upon his own initiative, the Commissioner or his agent shall have the authority to inspect the books and records of any person, other than a licensed dealer in agricultural products, who solicits, or attempts to solicit receipt, sale or transfer of agricultural products. The Commissioner or his agent shall conduct such inspections at any time during operating hours for the purpose of effectively administering this article. The Commissioner or his agent shall have the right of access to the place at which such person's business is operated, or the place where such books and records are kept.

§ [3.1-722.10](#). Refusal or revocation of license.

A. The Commissioner may refuse to grant a license, delay the issuance of a license or may revoke or suspend any license already granted when he is satisfied as to the existence of any of the following causes:

1. The dealer has suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;
 2. The dealer has failed to promptly and properly account or to promptly and properly pay for agricultural products;
 3. The dealer has made a false or misleading statement as to market conditions or the service rendered;
 4. The dealer has perpetrated a fraud or engaged in deceit in procuring the license;
 5. The dealer has engaged in any fraudulent or deceitful practices in his dealings with producers;
- or

6. The dealer has failed to comply with any provisions of this chapter or any rules and regulations adopted by the Board.

B. For the purposes of this section the following terms shall mean as follows:

1. "Promptly and properly account," except when otherwise specifically agreed upon in writing by the parties, means rendering to the principal a true and correct accounting:

(i) In connection with buying brokerage transactions, within twenty-four hours after the date of delivery of the agricultural products to their first destination;

(ii) In connection with consignment or joint account transactions, within ten days after the date of final sale with respect to each shipment. However, if a grower's agent, while conducting a grower's agent transaction, or a shipper distributes individual lots of produce for or on behalf of others, his accounting shall be made within five days after the date he is paid by the purchaser or receives the accounting on consigned or joint account transactions. If a grower's agent, while conducting a grower's agent transaction, or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, he shall make accountings within seven days following shipment by the dealer. Nothing in this section shall prohibit cooperative associations from accounting to their members on the basis of seasonal pools or other arrangements provided by their regulations or bylaws; and

(iii) In connection with a consignment or joint account transaction, within ten days after the date of receipt of payment of a carrier claim filed.

2. "Promptly and properly pay" shall mean payment within thirty days of the receipt of the products by the dealer, unless a written agreement signed by both parties expressly provides or permits otherwise. In the case of joint transactions, if the product sells at or for less than the agreed price, the dealer pays the agreed price to the grower. If the product sells for more than the agreed price, the dealer shall pay to the grower one-half of the difference between the sale price and the agreed price.

§ [3.1-722.11](#). Penalties; injunctions.

A. Any person who intentionally violates the provisions of this article or regulations promulgated thereunder shall be guilty of a Class 1 misdemeanor.

B. The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this article, or any regulation promulgated pursuant thereto, in the circuit court of the county or city in which the violation occurs or is about to occur, or in the Circuit Court of the City of Richmond if the violation may affect more than one county or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to bring action under this section, when appropriate. The Attorney General shall be authorized to prosecute any violation of this article which may affect more than one city or county.

§ [3.1-722.12](#). Hearing before the Commissioner.

Before the Commissioner shall refuse a license or revoke a license, the applicant or licensee shall have the right to review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

§ [3.1-722.13](#). Regulations of the Board; exemptions.

The Board is authorized to promulgate and enforce regulations for the administration of this article, and to grant exemptions from specific requirements of this article as, from time to time, may be deemed necessary.

§ [3.1-722.14](#). Copies of contracts to be filed with Commissioner.

Copies of any contract between any producer and dealer or between any dealer and buyer made in advance of the harvesting season to supply agricultural products shall be filed with the Commissioner within ten days of the signing of such contract.

§ [3.1-722.15](#). Reciprocal agreements with other states and federal government.

The Commissioner is authorized to enter into reciprocal agreements with appropriate officials of other states or of the federal government for the purpose of exchanging any information of violations of this article or laws of other states or the federal government which are similar in objectives with this article.